

§ 498.101

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(1) Make or cause to be made false statements or representations or omissions or otherwise withhold disclosure of a material fact for use in determining any right to or amount of benefits under title II or benefits or payments under title VIII or title XVI of the Social Security Act;

(2) Convert any payment, or any part of a payment, received under title II, title VIII, or title XVI of the Social Security Act for the use and benefit of another individual, while acting in the capacity of a representative payee for that individual, to a use that such person knew or should have known was other than for the use and benefit of such other individual; or

(3) Misuse certain Social Security program words, letters, symbols, and emblems; or

(4) With limited exceptions, charge a fee for a product or service that is available from SSA free of charge without including a written notice stating the product or service is available from SSA free of charge.

[60 FR 58226, Nov. 27, 1995, as amended at 61 FR 18079, Apr. 24, 1996; 71 FR 28579, May 17, 2006]

§ 498.101 Definitions.

As used in this part:

Agency means the Social Security Administration.

Assessment means the amount described in § 498.104, and includes the plural of that term.

Commissioner means the Commissioner of Social Security or his or her designees.

Department means the U.S. Department of Health and Human Services.

General Counsel means the General Counsel of the Social Security Administration or his or her designees.

Inspector General means the Inspector General of the Social Security Administration or his or her designees.

Material fact means a fact which the Commissioner of Social Security may consider in evaluating whether an applicant is entitled to benefits under title II or eligible for benefits or payments under title VIII or title XVI of the Social Security Act.

Otherwise withhold disclosure means the failure to come forward to notify the SSA of a material fact when such

person knew or should have known that the withheld fact was material and that such withholding was misleading for purposes of determining eligibility or Social Security benefit amount for that person or another person.

Penalty means the amount described in § 498.103 and includes the plural of that term.

Person means an individual, organization, agency, or other entity.

Respondent means the person upon whom the Commissioner or the Inspector General has imposed, or intends to impose, a penalty and assessment, as applicable.

Secretary means the Secretary of the U.S. Department of Health and Human Services or his or her designees.

SSA means the Social Security Administration.

SSI means Supplemental Security Income.

[60 FR 58226, Nov. 27, 1995, as amended at 61 FR 18079, Apr. 24, 1996; 71 FR 28580, May 17, 2006]

§ 498.102 Basis for civil monetary penalties and assessments.

(a) The Office of the Inspector General may impose a penalty and assessment, as applicable, against any person who it determines in accordance with this part—

(1) Has made, or caused to be made, a statement or representation of a material fact for use in determining any initial or continuing right to or amount of:

(i) Monthly insurance benefits under title II of the Social Security Act; or

(ii) Benefits or payments under title VIII or title XVI of the Social Security Act; and

(2)(i) Knew, or should have known, that the statement or representation was false or misleading, or

(ii) Made such statement with knowing disregard for the truth; or

(3) Omitted from a statement or representation, or otherwise withheld disclosure of, a material fact for use in determining any initial or continuing right to or amount of benefits or payments, which the person knew or should have known was material for such use and that such omission or withholding was false or misleading.

(b) The Office of the Inspector General may impose a penalty and assessment, as applicable, against any representative payee who receives a payment under title II, title VIII, or title XVI for the use and benefit of another individual and who converts such payment, or any part thereof, to a use that such representative payee knew or should have known was other than for the use and benefit of such other individual.

(c) The Office of the Inspector General may impose a penalty against any person who it determines in accordance with this part has made use of certain Social Security program words, letters, symbols, or emblems in such a manner that the person knew or should have known would convey, or in a manner which reasonably could be interpreted or construed as conveying, the false impression that a solicitation, advertisement or other communication was authorized, approved, or endorsed by the Social Security Administration, or that such person had some connection with, or authorization from, the Social Security Administration.

(1) Civil monetary penalties may be imposed for misuse, as set forth in paragraph (c) of this section, of—

(i) The words “Social Security,” “Social Security Account,” “Social Security Administration,” “Social Security System,” “Supplemental Security Income Program,” “Death Benefits Update,” “Federal Benefit Information,” “Funeral Expenses,” “Final Supplemental Program,” or any combination or variation of such words; or

(ii) The letters “SSA,” or “SSI,” or any other combination or variation of such letters; or

(iii) A symbol or emblem of the Social Security Administration (including the design of, or a reasonable facsimile of the design of, the Social Security card, the check used for payment of benefits under title II, or envelopes or other stationery used by the Social Security Administration) or any other combination or variation of such symbols or emblems.

(2) Civil monetary penalties will not be imposed against any agency or instrumentality of a State, or political subdivision of a State, that makes use of any words, letters, symbols or em-

blems of the Social Security Administration or instrumentality of the State or political subdivision.

(d) The Office of the Inspector General may impose a penalty against any person who offers, for a fee, to assist an individual in obtaining a product or service that the person knew or should have known the Social Security Administration provides free of charge, unless:

(1) The person provides sufficient notice before the product or service is provided to the individual that the product or service is available free of charge and:

(i) In a printed solicitation, advertisement or other communication, such notice is clearly and prominently placed and written in a font that is distinguishable from the rest of the text;

(ii) In a broadcast or telecast such notice is clearly communicated so as not to be construed as misleading or deceptive.

(2) Civil monetary penalties will not be imposed under paragraph (d) of this section with respect to offers—

(i) To serve as a claimant representative in connection with a claim arising under title II, title VIII, or title XVI; or

(ii) To prepare, or assist in the preparation of, an individual's plan for achieving self-support under title XVI.

(e) The use of a disclaimer of affiliation with the United States Government, the Social Security Administration or its programs, or any other agency or instrumentality of the United States Government will not be considered as a defense in determining a violation of section 1140 of the Social Security Act.

[71 FR 28580, May 17, 2006]

§ 498.103 Amount of penalty.

(a) Under § 498.102(a), the Office of the Inspector General may impose a penalty of not more than \$5,000 for each false statement or representation, omission, or receipt of payment or benefit while withholding disclosure of a material fact.

(b) Under § 498.102(b), the Office of the Inspector General may impose a penalty of not more than \$5,000 against a representative payee for each time the